

APPEAL NO. 021355
FILED JULY 10, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 22, 2002. The hearing officer determined that (1) the compensable injury of _____, does not extend to and include a hernia; and (2) good cause does not exist to relieve the appellant (claimant) from the effects of the Benefit Dispute Agreement (TWCC-24) (agreement herein) signed on August 14, 2000. The claimant appeals these determinations on sufficiency of the evidence grounds. The claimant also asserts error in the hearing officer's stipulated Finding of Fact No. 1(C) which provides, "On _____, the Claimant sustained a compensable injury to the low back and right knee." The claimant contends that the finding of fact leaves out the right hip. The respondent (carrier) responds that the claimant's appeal does not properly invoke the jurisdiction of the Appeals Panel. Alternatively, the carrier urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

We first address the carrier's assertion that the appeal does not properly invoke the jurisdiction of the Appeals Panel. The carrier contends that the appeal is insufficient because it was written and signed by the claimant's husband rather than by the claimant. We observe that the claimant's husband was designated as the claimant's representative at the initial hearing in these proceedings, when the claimant was without the assistance of an attorney or ombudsman. The claimant appears to be similarly situated on appeal. Under the circumstances, we are satisfied that the appeal is sufficient to invoke the jurisdiction of the Appeals Panel.

STIPULATION

As stated above, the claimant asserts error in the hearing officer's stipulated Finding of Fact No. 1(C) which provides, "On _____, the Claimant sustained a compensable injury to the low back and right knee." The claimant contends that the finding of fact leaves out the right hip, which was not disputed in the carrier's Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21), although not discussed at the hearing. Section 410.166 provides that an oral stipulation or agreement of the parties that is preserved in the record is final and binding. Accordingly, we will not reverse a finding consistent with the parties' stipulation; in this case, that the compensable injury included the low back and right knee. However, the stipulation, because it is silent with regard to the right hip, does not preclude a subsequent determination that the compensable injury includes the right hip.

EXTENT OF INJURY

The hearing officer did not err in determining that the compensable injury does not extend to and include a hernia. This was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence presented, we cannot conclude that the hearing officer's injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

AGREEMENT

The hearing officer did not err in determining that the claimant is not relieved of the effects of the agreement signed on August 14, 2000, by the claimant and the attorney at the benefit review conference. Section 410.030 provides that an agreement signed in accordance with Section 410.029 is binding on a claimant represented by an attorney, through the conclusion of all matters relating to the claim, unless the Texas Workers' Compensation Commission or a court, based on a finding of fraud, newly discovered evidence or other good and sufficient cause, relieves the claimant of the effect of the agreement. The hearing officer determined that the claimant failed to establish fraud, newly discovered evidence or other good and sufficient cause to set aside the agreement. Upon review of the evidence, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to compel its reversal on appeal. Cain, *supra*. Nor can we conclude that the hearing officer abused her discretion in deciding that good cause does not exist to relieve the claimant of the effects of the agreement.

The decision and order of the hearing officer are affirmed.

The true corporate name of the carrier is **EMPLOYERS INSURANCE OF WAUSAU** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Judy L.S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge